

## Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07

INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-06

OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01

FEA-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 SAM-01 /159 W  
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P 022318Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 8981

C O N F I D E N T I A L USUN 3557

FROM: US LOSDEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT SEPTEMBER 1

1. INFORMAL PLENARY SEPTEMBER 1 COMPLETED ANNEX 1B  
(ARBITRATION) AND BEGAN ANNEX 1C (LOW TRIBUNAL).

2. CONCLUDING COMMENTS ON ANNEX 1B ARTICLES 9, 10, AND  
11 FOCUSED ON A NUMBER OF DRAFTING AND TECHNICAL POINTS.  
ECUADOR SUGGESTED AMENDMENT TO ARTICLE 10 ALLOWING APPEAL  
AGAINST AWARD OF ARBITRAL TRIBUNAL TO THE LOS TRIBUNAL  
BY AGREEMENT BETWEEN THE PARTIES TO THE DISPUTE.  
CAMEROON, ISRAEL, UKRAINE, COLOMBIA, BULGARIA, AND FRANCE  
OPPOSED APPEAL ON BASIS OF DIFFERENCES IN COMPOSITION  
AND FUNCTIONING OF THE TWO BODIES AND EQUALITY OF  
PROCEDURES TO BE CHOSEN UNDER ARTICLE 9. CENTRAL  
AFRICAN REPUBLIC SUPPORTED ECUADOR AND US RESERVED ITS  
POSITION PENDING CLARIFICATIONS. ECUADOR FOUND IT  
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NECESSARY TO REITERATE AT END OF DEBATE THAT ITS

PROPOSAL REQUIRED AGREEMENT OF THE PARTIES AND EMPHASIZED APPEAL BY AGREEMENT SHOULD NOT BE FORECLOSED BY THE TEXT.

3. AMERASINGHE OPENED AFTERNOON SESSION WITH ANNOUNCEMENT THAT ARTICLES 2 AND 3 OF ANNEX IC, RSNT, ARE AMENDED AS FOLLOWS:

ART. 2 -- ADD AT THE END THEREOF THE WORDS QTE. PROVIDED THAT EACH REGIONAL GROUP SHALL HAVE A MINIMUM OF TWO MEMBERS UNQTE.

ART. 3 -- DELETE PARAS. 2 AND 3 IN THEIR ENTIRETY.

AMERASINGHE REQUESTED COMMENTS ON THE TEXT THUS AMENDED AND NOT RPT NOT ON PRINTED TEXT. HE ATTEMPTED TO GAVEL THROUGH TO ART. 4 OF ANNEX IC BUT A NUMBER OF DELEGATIONS TOOK THE FLOOR WITH GENERAL COMMENTS AND RESERVATIONS RELATING TO (A) WHETHER LOS TRIBUNAL SHOULD BE ESTABLISHED AT ALL OR (B) WHETHER THERE SHOULD BE ONE OR TWO TRIBUNALS.

4. UK RESERVED ON CREATION OF TRIBUNAL AND INDICATED A PREFERENCE TO COMBINE ANNEXES IB, IC AND II. FRANCE ELABORATED ITS POSITION IN OPPOSITION TO LOS TRIBUNAL OR ANY PRE-CONSTITUTED TRIBUNAL, CONCLUDING WITH SUGGESTION THAT THEY MAY NOT BE OPPOSED TO CREATION OF LOS TRIBUNAL SO LONG AS THEY ARE NOT REQUIRED TO USE IT, I.E., IN CASE OF ACCEPTANCE OF FRENCH AMENDMENT TO ART. 9, PARA. 7 OF MAIN TEXT, GIVING PREFERENCE TO ARBITRATION, SWITZERLAND EXPRESSED ITS SKEPTICISM AND PREFERENCE FOR ICJ OR ARBITRATION AGAIN. ROMANIA DID NOT FAVOR LOS TRIBUNAL AND PREFERRED ARBITRATION WHILE OTHERS COULD GO TO ICJ IF THEY WISHED.

5. USSR, SPEAKING EARLY IN THE DEBATE, WHILE SHARING IN PRINCIPLE UK RESERVATION, WARMLY WELCOMED AMERASINGHE'S AMENDMENT. USSR FELT, HOWEVER, THAT REFERENCE TO EQUITABLE GEOGRAPHIC REPRESENTATION IMPLIED POLITICIZATION OF THE TRIBUNAL AND SHOULD BE AVOIDED, SUGGESTED USE OF FORMULATION IN ART. 9 OF THE ICJ STATUTE INSTEAD, PRAISED THE ICJ AND SAID THAT IT MUST REMAIN THE PRINCIPAL CONFIDENTIAL

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JUDICIAL ORGAN OF THE UN SYSTEM. VENEZUELA QUESTIONED WHETHER A TRIBUNAL IS NECESSARY AND EXPRESSED ITS SATISFACTION WITH THE ICJ. BULGARIA STATED ITS PREFERENCE FOR THE ICJ AND ITS RESERVATIONS ON THE LOS TRIBUNAL, WHILE WELCOMING THE AMERASINGHE'S AMENDMENT. GDR INDICATED ITS MISGIVINGS ON LOS TRIBUNAL WERE NOT CURED BY AMERASINGHE'S AMENDMENT, ALTHOUGH CALLING IT CONSTRUCTIVE, AND SUPPORTED WORDING OF ART. 9 OF THE

ICJ STATUTE FOR ART. 2.

6. TUNISIA RESERVED ITS POSITION ON ANNEX IC AND THAT OF MOST G-77 MEMBERS PENDING DECISION OF COMMITTEE I WHETHER TO HAVE ONE OR TWO TRIBUNALS, AND ON PRESIDENT'S AMENDMENT FOR THAT REASON AND PENDING FURTHER THOUGHT. (AMERASINGHE SAID HE HAD NOT BEEN INFORMED THAT TUNISIA SPEAKS FOR THE 77.) TURKEY, BRAZIL, AND PERU JOINED TUNISIA. IRAQ SUPPORTED THE ONE TRIBUNAL APPROACH AND SUGGESTED ADDITIONAL CRITERIA IN ART. 2, PARA. 2 IN FAVOR OF THE LL/GDS, WITH SUPPORT OF BAHRAIN.ECUADOR SUPPORTED LOS TRIBUNAL AS JUDICIAL ORGAN EQUAL IN STATUS TO ICJ AND EXPRESSED ITS UNDERSTANDING THAT AMERASINGHE'S AMENDMENT DOES NOT RPT NOT INCORPORATE ICJ METHOD OF SELECTING JUDGES. FIJI ALSO SUPPORTED LOS TRIBUNAL AND SAID ICJ METHOD OF SELECTING JUDGES IS UNACCEPTABLE. NEW ZEALAND, YUGOSLAVIA AND AUSTRALIA SUPPORTED LOS TRIBUNAL.

7. NEW ZEALAND, AUSTRALIA, BAHRAIN, PERU, FIJI, AND YUGOSLAVIA SUPPORTED RETENTION OF EQUITABLE GEOGRAPHICAL REPRESENTATION CRITERIA IN ART. 2, PARA. 2.

8. US SAID IT WAS IMPRESSED WITH AMERASINGHE'S AMENDMENT AND THAT WE HAD NOT DECIDED WHICH OF THE PROCEDURES SET FORTH IN ART. 9, PARA. 1 OF THE MAIN TEXT WE WOULD ACCEPT, BUT THAT IT MIGHT BE ICJ, ARBITRATION OR JUST POSSIBLY THE LOS TRIBUNAL. US REP POINTED OUT THAT THE BETTER THE LOS TRIBUNAL IS, THE MORE LIKELY IT IS WE COULD SUPPORT IT AND THAT WE ARE PREPARED TO WORK FOR A WELL-CONSTITUTED TRIBUNAL. THE AMERASINGHE AMENDMENT REPRESENTS PROGRESS IN OUR VIEW, BUT WE SHARE THE SOVIET APPREHENSION OVER GEOGRAPHICAL CRITERIA.  
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US REP SAID THE QUALITY OF THE TRIBUNAL WOULD DEPEND ON THE METHOD OF SELECTION, AND PROPOSED AMENDMENT TO ART. 4 OF ANNEX IC TO REQUIRE 2/3 MAJORITY OF ALL CONTRACTING PARTIES FOR ELECTION. AMERASINGHE RESPONDED THAT FORMULA IN RSNT IS SAME AS FORMULA FOR ADOPTION OF CONVENTION TEXT UNDER RULES OF PROCEDURE, AND THAT THERE MAY BE NO RPT NO SELECTION OF JUDGES UNDER US AMENDMENT.  
BENNETT

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